IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Chander Shekhar Singh v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.1512/1995
under Article 226 of the Constitution of India.

Date of Order :: 1st May, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajat Dave, for the petitioner.
Mr. M.R.Singhvi, for the respondents.

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BY THE COURT :

The petitioner, an Inspector Gr.I in Department of Excise, Government of Rajasthan, has preferred this petition for writ assailing validity of the order dated 16.1.1995 passed by the Commissioner, Excise, Rajasthan, making placement of the respondents No.3, 4 and 5 in the seniority list pertaining to the Excise Inspectors Gr.II above him. It is relevant to note that the Commissioner, Excise passed the order aforesaid in pursuant to the direction given by this Court at Jaipur in DBCivil Writ Petition No.1477/1990. The contention of the petitioner is that in the writ petition referred above the respondent No.3 on basis of wrong facts obtained an order and on basis of that

his seniority alongwith the respondents No.4 and 5 is erroneously determined by the Commissioner Excise.

In brief, facts of the case are that the petitioner entered in the services of the Department of Excise being appointed as Inspector Gr.II as a consequent to his regular selection in the year 1977. He was confirmed on the post aforesaid under an order dated 16.8.1980. A promotion was also given to him on adhoc basis as Inspector Gr.I on 14.10.1988. A regular promotion was given to him as Inspector Gr.I under an order dated 25.10.1989 and was also promoted as Assistant Excise Officer against the vacancies of the year 1994-95 under an order dated 6.10.1994.

The respondents No.3, 4 and 5 were initially working in the Department of Land and Building Tax but on becoming surplus there they were absorbed in Department of Excise as Inspector Gr.II under an order dated 25.6.1992. A seniority list of the Inspectors Gr.II working in the Department of Excise was declared on 28.11.1987 wherein the private respondents were shown juniors than the petitioner, however, a challenge was given to the aforesaid seniority list by the respondent No.3 and some other similarly situated persons by way of filing an appeal before the Rajasthan Civil Service Appellate Tribunal, Jaipur. The appeal preferred by the respondent No.3 and other similarly situated persons came to be rejected and

validity of that was assailed by them by way of filing a writ petition before this Court. The writ petition preferred by them came to be accepted by Division Bench of this Court vide judgment dated 24.11.1990 (DBCivil Writ Petition No.1477/90). The Division Bench while accepting the writ petition aforesaid, held as under:-

> "As is evident from Rule 7, since the petitioner was holding appointment from 1974 in substantive capacity, he was entitled to be appointed substantively on a permanent post, if the post is clearly vacant. However, the petitioner was appointed on temporary basis, even though, in violation of Rule 7 of the Rules, 1969. It may also be pointed out that in Anx.8 issued by the General Administration Department, the petitioner was directed to be absorbed on the post of Excise Inspector, but it is not mentioned that he shall be absorbed on temporary basis. Anx.9 is only a formal order issued by the Commissioner, Excise Department, in obedience to Anx.8 issued by the General Administration Department. It is mentioned in Anx.8 itself that only formal orders shall be issued by the Department, where the surplus employee has been sent on a particular post. Therefore, there was no occasion/reason to have absorbed the petitioner on temporary basis on the post of Excise Inspector Grade II."

While accepting the writ petition a direction was given by Division Bench of this Court as follows:-

> "It is, therefore, directed that the order of the Tribunal dated December 29, 1989 (Anx.17) passed in Appeal No.46/88 is quashed & set aside. It is further directed that the seniority lists dated November 28, 1987 (Anx.14) and September 8, 1989 (Anx.15), sofaras they relate to the petitioner, are also quashed & set aside and respondent No.2 – The Excise Commissioner, Rajasthan,Udaipur, is directed to determine the seniority of the petitioner under Rule 15(1) of the Rules, 1969 and he be given benefits of the substantive service w.e.f. March 1, 1974 & be placed above the Inspectors Grade II, who were appointed after March 1, 1974."

A Special Leave Petition giving challenge to the judgment dated 24.11.1990 preferred by the State of Rajasthan also came to be rejected by an order dated 5.8.1991. The present petitioner then preferred a review petition before Division Bench of this Court alleging therein that no permanent post of Inspector Gr.II was available in Land and Building Tax Department before 27.2.1981 and, therefore, there was no question of the respondents No.3, 4 and 5 (in present petition for writ) holding the post substantively. According to the petitioner the finding given by Division Bench of this Court in the judgment dated 24.11.1990 was not correct being based on wrong facts. The review petition preferred by the petitioner by an order dated 31.3.1995 was rejected by Division Bench of this Court on the count that the documents on

which the petitioner sought review were not part of earlier petition for writ. Hence the petitioner is agitating his cause by this petition for writ.

It is asserted by counsel for the petitioner that no post of Inspector Gr.II was available in Land and Building Tax Department before 27.2.1981 and, therefore, there was no question of holding the posts substantively by the respondents No.3, 4 and 5 in their parent department. To substantiate the contention it is stated by counsel for the petitioner that by an order dated 4.5.1976 an amendment was made in the order dated 1.3.1974 whereby appointment was given to the respondent No.3 and by this amendment the word “probation” was deleted. The term “probation”, according to counsel for the petitioner, was deleted only for the reason that no permanent post of Inspector Gr.II at the relevant time was available in the Department of Land and Building Tax. It is asserted that the petitioner being not a substantive appointee till availability of permanent post i.e. on 27.2.1981, the respondent No.3 was holding the post in temporary capacity and, therefore, he was erroneously treated as substantive and ordered for placement in the seniority list accordingly.

I do not find any substance in the contention raised above. It is the position admitted that before making appointment of the respondents No.3, 4 and 5,

with Department of Land and Building Tax, regular selection proceedings as prescribed under the Rules was adhered. As a matter of fact whatever contentions the petitioner wants to raise in this petition for writ were taken into consideration by Division Bench of this Court while deciding earlier petition for writ by the judgment referred above. The substantive appointment necessarily does not mean that it should always be against permanent post. A substantive appointment can also be made against a temporary post but the essential requirement is that it should be by adherence of regular procedure prescribed under the relevant rules. The appointments of the respondents No.3, 4 and 5 by a regular mode of selection is not in dispute, as such whatever contention raised in this petition for writ are having no force. The petition for writ, therefore, deserves dismissal.

Accordingly, the writ petition is dismissed.

( GOVIND MATHUR ),J.

Kkm/ps.